

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
2010 Quadrennial Regulatory Review –	)	
Review of the Commission’s Broadcast	)	MB Docket No. 09-182
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	
	)	
Promoting Diversification of Ownership in the	)	MB Docket No. 07-294
Broadcasting Services	)	

**JOINT COMMENTS OF  
BONNEVILLE INTERNATIONAL CORPORATION  
AND THE SCRANTON TIMES, L.P.**

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AND THE SCRANTON TIMES, L.P.**

Bonneville International Corporation (“Bonneville”) and The Scranton Times, L.P. (“Scranton”) (collectively “Bonneville/Scranton”) hereby submit their comments in the rulemaking phase of the Commission’s fifth review of its media ownership rules since passage of the Telecommunications Act of 1996 (the “1996 Act”).<sup>1</sup> These comments are limited to one rule: the newspaper/radio cross-ownership restriction, which bars common ownership of a daily newspaper and radio stations in the same local market.<sup>2</sup> That prohibition has remained intact for 37 years, despite repeated Commission observations over time that the rule serves little purpose and a dearth of empirical evidence showing that it actually advances any government goal.

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<sup>1</sup> 2010 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 09-182, FCC 11-186 (rel. Dec. 22, 2011) (“2011 NPRM”). Bonneville owns 12 radio stations and a television station in markets in several states, including stations ultimately commonly owned with a newspaper in Salt Lake City, Utah. Scranton owns six radio stations and has commonly owned newspaper/radio interests in Scranton, Pennsylvania.

<sup>2</sup> 47 C.F.R. § 73.3555(d) (restricting common ownership of a daily newspaper and a radio or television broadcast station in the same local market). While Bonneville/Scranton believes that the record here justifies elimination of the entire newspaper/broadcast restriction, these comments focus on the newspaper/radio prohibition.

Given the record now before the agency, the Commission should adopt the *2011 NPRM*'s proposal to eliminate the restraint altogether.<sup>3</sup>

## **I. INTRODUCTION AND SUMMARY**

The Commission has called for comment on the newspaper/radio component of the broader newspaper/broadcast cross-ownership (“NBCO”) rule seven times in the last 16 years, beginning with an inquiry launched shortly before implementation of the 1996 Act and through all five of the statutorily mandated media ownership reviews since then (including the inquiry that launched the current proceeding). After all this time and all this input, the Commission finally – and appropriately – is considering elimination of the newspaper/radio restraint. The Commission should take that step for several reasons.

First, the lone policy goal on which the newspaper/radio restraint rests is viewpoint diversity, and yet the Commission has no evidence to show that barring common ownership of newspapers and radio stations actually serves that objective. The Commission has identified the production of local news and information as the crux of its diversity concern. Providing such content is, of course, central to the mission of daily newspapers, but as the record in this proceeding reflects, the same is not the case for radio. The Commission has long recognized that radio has evolved into a more targeted content service that, while still covering issues of public importance, typically engages in little local news production. Thus, even as a theoretical matter, the newspaper/radio restraint cannot foster a diversity of viewpoints because the two affected outlets do not generate or disseminate similar content. The Commission appears to have already tacitly conceded this point, for of the 11 ownership studies it launched as part of this proceeding, only one even looks at newspaper/radio combinations. Even then, the single study does not

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<sup>3</sup> *2011 NPRM* at ¶ 112.

evaluate such combinations to determine their possible impact on content offered by newspapers or any other “cross”-media platform available in a local market; instead, the analysis merely considers the impact of various ownership structures on radio-only news offerings.

Second, lifting the newspaper/radio restraint can help to protect and advance local newsgathering by affording daily newspapers, as the key generator of local news reporting, a broader base of financial support and an increased ability to reach audiences through many platforms, including associated websites. Some newspaper/radio combinations provide considerable local coverage in on-air newscasts, but all such combinations – regardless of their content mix – can provide a more stable financial foundation for newsgathering and reporting and thereby serve the Commission’s localism goal. The agency should pay heed to the data collected in its own staff’s *Information Needs of Communities* report (“*INC Report*”), which makes plain that newspapers are in the midst of a turbulent transformation driven by permanent technological change. The shuttering of newspapers is no longer a mere debating point in FCC ownership rulemakings; the *INC Report* lists more than 175 papers that have closed since 2007.<sup>4</sup> No one claims that elimination of the newspaper/radio rule will “save” daily newspapers, but the Commission has no justification for barring newspaper owners from attempting to build and maintain viable local news enterprises that include radio outlets in the mix. Moreover, by permitting such ownership structures, the agency will encourage the enterprises to disseminate more local news via radio.

Third, eliminating the newspaper/radio rule will bring the Commission’s actions into line with its own history of observations on the actual impact of the regulation. The agency has been

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<sup>4</sup> STEVE WALDMAN AND THE WORKING GROUP ON INFORMATION NEEDS OF COMMUNITIES, FCC, *THE INFORMATION NEEDS OF COMMUNITIES: THE CHANGING MEDIA LANDSCAPE IN A BROADBAND AGE* 349, at 41 (2011) (“*INC Report*”), available at [http://transition.fcc.gov/osp/inc-report/The\\_Information\\_Needs\\_of\\_Communities.pdf](http://transition.fcc.gov/osp/inc-report/The_Information_Needs_of_Communities.pdf).

on record regarding the limited role of radio in newsgathering ever since the Commission began formulating the rule. Even back at a time when the media marketplace was radically smaller and simpler than it is today, the Commission's original 1970 Notice of Proposed Rulemaking stated that "common control of television stations and newspapers of general circulation" was the agency's "most significant" concern because studies showed that "the public looks primarily to these two sources for its news and information on public affairs. Other broadcast services and other printed publications are *substantially less significant* in this respect." (Emphasis added.) The Commission has made similar observations regarding radio throughout the intervening 42 years. In the current proceeding, the agency has repeatedly emphasized its interest in undertaking a dispassionate, fact-driven review of the ownership rules. Such a review can only lead to the next logical step with respect to the newspaper/radio restraint: Repeal it outright because the record contains no evidence showing that it serves the intended purpose.

For similar reasons, the Commission should not retain a newspaper/radio rule that provides relief to some number of large markets while denying relief to the rest. The *2011 NPRM* proposes to provide some limited relaxation of the NBCO rule for entities in the "top 20" Nielsen Designated Market Areas ("DMAs"), on the theory that larger markets necessarily are associated with more media outlets and independent "voices." A brief initial analysis of the top 20 cut-off in the radio context, however, proves the theory to be unreliable; the Salt Lake City DMA (No. 33) contains substantially more radio facilities and separate owners than do some of the top 20 DMAs. This anomaly could well bedevil any comparable approach based on market size and so provides additional support for simply jettisoning the newspaper/radio restraint altogether.

If the Commission nevertheless retains some limit on newspaper/radio combinations, it should maintain its current contour-overlap approach to defining the local market boundaries that trigger application of the rule. The *2011 NPRM* correctly questions the unintended consequences that would follow if the rule were to use Arbitron metro boundaries as the market definition. In many cases, the Arbitron market encompasses more geographic territory than the current contour-based approach and therefore would prohibit newspaper/radio combinations that are permissible today. Given that the Commission has no empirical justification for retaining the rule at all, a modification that would extend the geographic scope of the existing restraint would be a perverse outcome. The impact could fall most heavily on media enterprises that own outlets in far-flung, economically modest communities, where the financial base of the collective enterprise is particularly critical for ongoing newsgathering operations.

## **II. THE COMMISSION SHOULD ACT ON ITS LONG-STANDING RECOGNITION THAT RADIO WARRANTS DIFFERENT TREATMENT UNDER THE NEWSPAPER/BROADCAST CROSS-OWNERSHIP RULE**

Although the record now before the Commission supports elimination of the entire NBCO rule, the record compels elimination of one aspect of it: the restraint on common ownership of radio stations and daily newspapers in the same market. The agency's own past pronouncements make clear that newspaper/radio combinations have never been the primary concern of policymakers. Even when the restraint was first conceived more than 40 years ago – before the rise of cable, satellite radio and television, and the Internet – the Commission understood that radio stations did not play a substantial role in the provision of local news. That content has been the driving concern underlying the Commission's viewpoint diversity goal which, in turn, is the sole policy premise on which the NBCO rule rests. The Commission's understanding of radio's limited role in newsgathering and dissemination has been reflected consistently in every significant agency pronouncement on the newspaper/radio component of

the NBCO rule since 1970. The Commission now should bring its regulatory actions into line with its own objective observations – as well as the empirical evidence in this docket – by adopting the proposal to eliminate the newspaper/radio restraint in its entirety.<sup>5</sup>

The procedural history of the NBCO rule reveals that the newspaper/radio restraint has been treated as a regulatory after-thought throughout its existence. To comprehend the degree of disconnection between the Commission’s observations and the rule’s endurance, it is helpful to look back to 1975, when the agency first articulated its policy rationale for imposing the general NBCO ban: “The significance of ownership ... lies in the fact that ownership carries with it the power to select, to edit, and to choose the methods, manner and emphasis of presentation” for news and public affairs programming.<sup>6</sup> This broad concern about media “gatekeeping,”<sup>7</sup> however, is in tension with the Commission’s parallel recognition that radio has made only limited contributions to production of local news programming. That recognition emerged even before the NBCO rule was imposed and has remained constant across four decades:

**1970** – The Notice of Proposed Rulemaking that led to adoption of the NBCO rule stated that “[i]t has now become clear that the most significant aspect of the problem is the common control of television stations and newspapers of general circulation. For, the studies presented in this record and otherwise available are in full agreement that the public looks primarily to these two sources for its news and information on public affairs. Other broadcast services and other printed publications are *substantially less significant* in this respect.”<sup>8</sup>

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<sup>5</sup> 2011 NPRM at ¶ 112.

<sup>6</sup> Amendment of Sections 73.34, 73.240, and 73.636 of the Commission’s Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations, 50 FCC 2d 1046, 1050 ¶ 14 (“1975 Second Report and Order”) (internal quotation and citation omitted).

<sup>7</sup> See *infra* Section III.B.3.

<sup>8</sup> Amendment of Sections 73.35, 73.240, and 73.636 of the Commission’s Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations, 22 FCC 2d 339, 344 ¶ 26 (emphasis added) (“1970 NPRM”); see also *id.* at ¶ 27. (“The various groups which have studied the degree of public reliance on various forms of communications – television, radio,



- 1975** – Even as it imposed NBCO restraints on newspaper/radio combinations, the Commission noted that “[r]ealistically, a radio station cannot be considered the equal of either the paper or the television station in any sense, least of all in terms of being a source for news or being the medium turned to for discussion of matters of local concern.”<sup>9</sup> While recognizing the argument that “the larger number of radio facilities means there already is more diversity than in television,” the agency nevertheless imposed the new restraint because “the fact is that we wish to encourage still greater diversity. This to us is a worthwhile goal which does not depend on its being urgent to be justified.”<sup>10</sup> Still, at the same time the Commission conceded that only in communities unserved by any local TV station would a newspaper/radio combination pose the same policy concern as a newspaper/television combination.<sup>11</sup>
- 1996** – Responding to debate in a transactional proceeding that predated the 1996 Act, the Commission opened an inquiry to consider easing waiver standards for newspaper/radio combinations. In doing so, the agency noted that “[w]e have previously determined that a television station is, relatively speaking, more a source of news than is a radio station.”<sup>12</sup>
- 1998** – The Commission folded the record of its 1996 inquiry into its first mandated review of the broadcast ownership rules under the 1996 Act. Once again, the

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newspapers, magazines, other people or sources – are unanimous in the conclusion that television and the daily newspaper of general circulation are preeminent in importance.”) . In addition, the *1970 NPRM* noted a substantial drop in the number of people identifying radio as their primary source of local news from 1959 to 1968, *see id.*, a time period that coincides with the growth of television newscasts.

<sup>9</sup> *1975 Second Report and Order* at 1083 ¶ 115 (“[T]he radio station standing by itself cannot be considered as providing significant diversity or as constituting a meaningful competitor at all”).

<sup>10</sup> *Id.* at 1076 ¶ 104. The *1975 Second Report and Order* devoted one paragraph of a 135-paragraph document to the Commission’s policy rationale for extending the NBCO rule to radio/newspaper combinations. In contrast, at least 17 paragraphs of the *1975 Second Report and Order* were solely devoted to discussion of newspaper/TV combinations, which included review of studies and hearing testimony.

<sup>11</sup> *Id.* at 1083 ¶ 116.

<sup>12</sup> *Newspaper/Radio Cross-Ownership Waiver Policy*, Notice of Inquiry, 11 FCC Rcd 13003, 13010 ¶ 11 (1996); *see also id.* at 13012 ¶ 15.

Commission duly noted that Americans relied upon radio as a news and information source “to a lesser extent than television and newspapers.”<sup>13</sup>

**2003** – In its first omnibus review order under the 1996 Act, the Commission found that “broadcast radio generally has less of an impact on local diversity than broadcast television” and so would only have restricted newspaper/radio combinations in “at-risk” markets with three or fewer television stations.”<sup>14</sup>

**2007** – The agency again determined that “proposed newspaper/radio combinations will generally be less likely to raise concentration concerns than proposed newspaper/television combinations in light of the fact that radio is generally not as influential a voice as is television.”<sup>15</sup> Consistent with that view, the Commission expected that its new NBCO rule will “make it less difficult for newspaper/radio combinations to overcome the negative presumption.”<sup>16</sup>

**2011** – The Commission’s consistent recognition of radio’s relatively slight contribution to local newsgathering extends to the current quadrennial review. In discussing the NBCO rule, the *2011 NPRM* tentatively concludes that “radio stations are not

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<sup>13</sup> *1998 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Inquiry, 13 FCC Rcd 11276, 11289 ¶ 41 (1998) (citing 1997 professional polling data).

<sup>14</sup> *2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13800 ¶ 459, 13803–04 ¶ 469 (2003) (“*2002 Biennial Review Order*”); *rev’d and remanded*, *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004) (“*Prometheus I*”).

<sup>15</sup> *2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2052 ¶ 73 (2008) (“*2006 Quadrennial Review Order*”) (citing FCC-commissioned and commenter studies indicating that “Americans rely on newspapers and television more than radio for local news and information”); *see also id.* at 2044 ¶ 59 n.197, 2057 ¶ 80 n.259. The Commission also anticipated that it would more readily approve newspaper/radio combinations in markets below the top 20 “in light of the fact that radio is generally not as influential a voice as is television.” *Id.* at 2052 ¶ 73; *see also id.* at 2049 ¶ 68 n.220.

<sup>16</sup> *Id.* at 2052 ¶ 73. Other elements of the rule adopted in 2007 also reflect the Commission’s understanding of radio’s limited role in local newsgathering. The current restraint excludes radio from the “major media voices” factor applied to proposed newspaper/TV combinations, and imposes no voices test at all to proposed newspaper/radio combinations. *See* 47 C.F.R. § 73.3555(d)(3)(ii).

the primary outlets that contribute to local viewpoint diversity.”<sup>17</sup> Even the mechanics of the Commission’s proposed new NBCO rule reveal that newspaper/radio combinations are secondary considerations at most: The proposed provision for relaxing the restraint in the “top 20” markets employs a geographic definition relevant to television stations, not radio facilities.<sup>18</sup>

In short, the Commission has imposed restraints on newspaper/radio combinations for years with no serious expectation that the regulations actually serve the agency’s stated policy goals.<sup>19</sup> Under current statutory standards, however, the Commission cannot forestall forever the

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<sup>17</sup> See, e.g., *2011 NPRM* at ¶¶ 89, 96, 112. See also *infra* Section III.A (Pew/Baltimore study finds no radio origination of information included in on-air local news stories).

<sup>18</sup> See *2011 NPRM* at App. B, which proposes new text for Rule 73.3555(d)(2) that would provide for limited relaxation of the NBCO rule in the 20 largest of Nielsen’s Designated Market Areas (“DMAs”), regardless of whether the broadcast outlet at issue is a TV or radio station. Other ownership rules affecting radio, including the local caps that the *2011 NPRM* proposes to retain and the TV/radio cross-ownership rule that the *2011 NPRM* proposes to eliminate, rely on Arbitron market boundaries for the relevant geographic definitions.

<sup>19</sup> Decades ago, the agency enjoyed greater latitude in making predictive judgments to support its ownership decisions. See *FCC v. National Citizens Comm. for Broadcasting et al.*, 436 U.S. 775, 813-14 (1978) (“*NCCB*”) (“[T]o the extent that factual determinations were involved in the Commission’s decision to ‘grandfather’ most existing combinations, they were primarily of a judgmental or predictive nature.... In such circumstances complete factual support in the record for the Commission’s judgment or prediction is not possible or required.”). Since enactment of the 1996 Act, however, the Commission has been expected to grapple with empirical evidence in justifying its decision-making on the ownership rules, even as the circuit courts disagreed on the deregulatory thrust of Section 202(h). See *Fox TV Stations, Inc. v. FCC*, 280 F.3d 1027, 1043 (D.C. Cir. 2002) (invalidating decision on national television cap rule because, *inter alia*, FCC conclusion lacked “sufficient support in the present record,” contradicted prior findings, and was not grounded on any analysis of state of competition in marketplace), *amended by* 293 F.3d 537 (D.C. Cir. 2002) (declining to resolve meaning of statutory term “necessary”); *Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148, 162 (D.C. Cir. 2002) (“notwithstanding the substantial deference to be accorded to the Commission’s line drawing, the Commission cannot escape the requirements that its action not run ‘counter to the evidence before it’ and that it provide a reasoned explanation for its action”) (internal citation omitted); see also *id.* at [¶ 29] (“The rulemaking record does not fill the evidentiary gap.”); *Prometheus I*, 373 F.3d at 395 (even under deferential review, agency decision may not “run counter to the evidence before the agency”).

need to provide a reasoned explanation of its decision-making with respect to this rule.<sup>20</sup> For the reasons set forth below, the Commission should jettison the newspaper/radio restraint as unnecessary and outdated, and thereby strengthen the sustainability of its regulatory action.<sup>21</sup>

### **III. ELIMINATING RESTRAINTS ON NEWSPAPER/RADIO CROSS-OWNERSHIP WILL FULFILL THE COMMISSION'S STATUTORY MANDATE**

By its terms, Section 202(h) of the 1996 Act requires the Commission to assess the current state of competitive media marketplace in empirically justifying whatever ownership restraints it decides to retain.<sup>22</sup> With respect to newspaper/radio combinations, the *2011 NPRM* appropriately calls for comment on eliminating the current restraint in its entirety rather than

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<sup>20</sup> Telecommunications Act of 1996, Pub. L.A. No. 104-104, 110 Stat. 56, § 202(h), 111-12 (1996) (“1996 Act”) (“The Commission shall review ... all of its ownership rules biennially ... and shall determine whether any of such rules are necessary in the public interest as the result of competition.”) The Commission has not yet been subject to exacting court scrutiny of the agency’s substantive rationale for the newspaper/radio cross-ownership restraint. In *Prometheus I*, the Third Circuit actually endorsed the Commission’s general rationale for dramatically relaxing the cross-ownership rules but questioned the precise line-drawing embodied in the Diversity Index. *Prometheus I*, 373 F.3d at 397–411. In *Prometheus II*, the court remanded the NBCO rule on procedural grounds and so never considered the substance of the Commission’s decision-making. *Prometheus Radio Project v. FCC*, 652 F.3d 431, 445 (3d Cir. 2011) (“*Prometheus II*”) (“Because we conclude that the Commission did not meet the [Administrative Procedure Act’s] notice and comment requirements for [the NBCO] rule, we do not reach any of [the petitioners’] challenges to its substance.”).

<sup>21</sup> In an edition of C-SPAN’s “The Communicators” program that aired on Oct. 9, 2010, three previous FCC chairmen – Reed Hundt, Michael Powell and Kevin Martin – discussed the difficulties they confronted in attempting to revise the NBCO rule. See *C-SPAN Talks to Former FCC Commissioners*, RADIO, Oct. 11, 2010, available at <http://radiomagonline.com/currents/news/cspan-former-fcc-commissioners-1012/> (“Reed Hundt asked why no Commission has ever been able to fully eliminate the restriction, which all three agreed made no sense.”). A full version of the program is available at <http://www.youtube.com/watch?v=OTRusXfOXpY>.

<sup>22</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996) (“The Commission shall review ... all of its ownership rules biennially ... and shall determine whether any of such rules are necessary in the public interest as the result of competition.”).

retaining any unnecessary vestiges of it.<sup>23</sup> As the discussion below demonstrates, there is no evidence in the docket to support an ongoing newspaper/radio rule for the purpose of serving any of the Commission's three traditional policy goals – competition, localism, and diversity. To the contrary, the restraint today is either irrelevant with respect to those goals or actually disserves them.

**A. In Today's Highly Diverse And Competitive Media Marketplace, Radio Stations Are Relatively Specialized Outlets That Do Not Broadly Engage In Local News Production**

The Commission already has a wealth of empirical evidence – in this docket and elsewhere – that demonstrates the relatively minor place that commercial radio stations occupy today in the broad news and information marketplace.<sup>24</sup> One useful source of relevant data is the Commission staff's *Information Needs of Communities* report (“*INC Report*”). The staff drafters of the *INC Report* provided a useful recap of how radio content has evolved over time as the number of media outlets has expanded, new technologies have disrupted settled business models, and policymakers have responded to marketplace changes.<sup>25</sup> As of 2010, the *INC Report* found just 30 commercial all-news stations across the nation.<sup>26</sup> Radio newsrooms, if they exist, are small; a typical median-size radio station in 2009 had one employee devoted to news.<sup>27</sup> The hybrid news/talk format is much more prevalent, but it relies largely on nationally syndicated fare: 86 percent of the news and public affairs programming broadcast on news/talk radio is

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<sup>23</sup> 2011 NPRM at ¶ 112.

<sup>24</sup> *Id.* (citing numerous comments in the inquiry phase of this docket explaining that newspaper/radio combinations raise few concerns).

<sup>25</sup> *INC Report* at 58-70.

<sup>26</sup> *Id.* at 62.

<sup>27</sup> *Id.* at 64.

national rather than local.<sup>28</sup> The number of people who said that they listened to news on the radio dropped from 54 percent in 1991 to 34 percent in 2010.<sup>29</sup> As a result, the *INC Report* concluded, “it is clear that fewer people are relying on radio for their news.”<sup>30</sup>

An oft-cited study in the debate over the continuing value of the NBCO rule generally – the Pew Research Center’s analysis of the origins of news reporting in Baltimore (the “Pew/Baltimore study”)<sup>31</sup> – made findings concerning radio that are consistent with that of the *INC Report*. Like the Commission staff’s determination, the Pew study results demonstrate that radio plays a considerably more limited role in gathering and broadcasting local news. First, the study found that the majority of news segments airing on news/talk radio stations concerned national or non-local events,<sup>32</sup> in contrast to the locally focused stories offered by other media.<sup>33</sup> Second, the study found that, of the more than three dozen radio stations serving the metropolitan area, only four (two of which were noncommercial) broadcast any local news or

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<sup>28</sup> *Id.* at 14 (“Though there are still some extraordinary local news efforts ... they are more rare than they used to be.”)

<sup>29</sup> *Id.* at 62.

<sup>30</sup> *Id.* at 62; *see also id.* at 13.

<sup>31</sup> PEW RESEARCH CENTER’S PROJECT FOR EXCELLENCE IN JOURNALISM, *How News Happens: A Study of the News Ecosystem of One American City* (Jan. 11, 2010), [http://www.journalism.org/analysis\\_report/how\\_news\\_happens](http://www.journalism.org/analysis_report/how_news_happens). The study consisted of a week-long examination of the output of all the outlets that produced local news in Baltimore, MD, and a closer examination of six major narratives from that output. *See id.* at 1.

<sup>32</sup> *See id.* at 6. It is not clear from the study whether or not the same is also true for non-talk radio stations.

<sup>33</sup> *See id.*

talk.<sup>34</sup> Third, the study found no original reporting aired on radio stations “either in talk radio or in the news inserts and radio headlines that were produced during the periods studied.”<sup>35</sup>

This data does not mean that radio stations add nothing to the smorgasbord of news and information available to consumers in the modern media marketplace.<sup>36</sup> Some strong commercial radio news stations exist, including but not limited to those licensed to the commenters, and certainly contribute to consumers’ broad array of content options. Still, despite the contributions that radio stations make to consumers’ array of news and information options, the empirical evidence shows that radio generally does not significantly engage in original newsgathering or in disseminating locally focused news and information. The Commission itself has credited studies that equate the role of radio in this regard to that of weekly newspapers<sup>37</sup> – a type of media outlet that the agency has never bothered to encompass within its cross-ownership restrictions. Given this factual foundation, the discussion below reveals that the agency cannot justify continuing newspaper/radio restraints for the sake of any of its policy objectives. To the contrary, elimination of the rule could encourage the broadcast of more local news and information over radio facilities.<sup>38</sup>

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<sup>34</sup> See *id.* at 5.

<sup>35</sup> See *id.* at 7.

<sup>36</sup> All licensed radio stations air material designed to serve the public interest, and many include various types of news and informational content in their programming mix.

<sup>37</sup> 2006 *Quadrennial Review Order* at 2042–43 ¶ 57 & n.187(citing to study submitted by Consumers Union, et al., which found that radio stations and weekly newspapers trail television stations and daily newspapers as consumers’ most used and most valued news sources).

<sup>38</sup> See *infra* Section III.B.2.

**B. The Record Now Before The Commission Shows That Newspaper/Radio Combinations Do Not Negatively Affect The Policy Goals Underlying The Cross-Ownership Rule**

***1. Eliminating newspaper/radio cross-ownership restraints will not impede competition because newspapers and radio stations do not compete in the same product market***

The Commission should adopt the *2011 NPRM*'s tentative conclusion "that newspapers and broadcast stations do not compete in the same product market and, therefore, that the rule is not necessary to promote our competition goal."<sup>39</sup> Doing so will maintain the agency's long-standing determination on this issue, which dates back a decade and is in keeping with well-established principles of competitive analysis.<sup>40</sup> Multiple studies and reviews in recent years have made clear that advertisers do not consider newspapers and broadcast stations to be close substitutes,<sup>41</sup> and the U.S. Court of Appeals for the Third Circuit has accepted that finding.<sup>42</sup>

The record in this docket contains no empirical evidence that would support a contrary conclusion. With respect to newspapers and radio stations in particular, the product markets are quite distinct – which antitrust authorities explicitly acknowledged at the time the Commission

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<sup>39</sup> *2011 NPRM* at ¶ 89.

<sup>40</sup> The Commission has repeatedly determined that "newspaper/broadcast combinations cannot adversely affect competition in any relevant product market." *2006 Quadrennial Review Order* at 2033 ¶ 39 n.131; *see also 2002 Biennial Review Order* at 13748–13752 ¶¶ 331-341. Furthermore, as the *2011 NPRM* reflects, the Commission considers the state of economic competition in the media ownership proceeding for only a relatively limited purpose. *2011 NPRM* at ¶ 122. The FCC does not broadly engage in antitrust analysis in the context of this rulemaking, but rather seeks only to understand whether broadcasters are able to "organize efficiently and compete for advertising dollars" and thereby continue to collectively provide an array of programming options to their audiences. *2002 Biennial Review Order* at 13748 ¶ 331.

<sup>41</sup> *See, e.g., 2002 Biennial Review Order* at 13749 ¶ 332 (citing antitrust cases and FCC-commissioned studies that concluded that the local newspaper market is distinct from the local broadcast market).

<sup>42</sup> *Prometheus I*, 373 F.3d at 398.



adopted the NBCO rule.<sup>43</sup> Accordingly, a newspaper/radio combination could pose no competitive threat in a local media marketplace.

**2. *Newspaper/radio combinations can benefit localism by fostering enterprises that are able to support local newsgathering and disseminate content across many platforms***

As the *2011 NPRM* proposes, the Commission should affirm its earlier findings – and that of the Third Circuit – that newspaper/broadcast combinations can benefit the public interest by advancing the agency’s localism goal.<sup>44</sup> The *2011 NPRM* explains that “the opportunity to share newsgathering resources and realize other efficiencies derived from economies of scale and scope may improve the ability of commonly owned media outlets to provide local news and information.”<sup>45</sup>

With respect to newspaper/radio combinations, the “improved abilities” are two-fold. First, the combined outlets can work together cooperatively to gather local news and/or disseminate it more broadly across multiple platforms,<sup>46</sup> including the websites associated with traditional media outlets. Affording a media enterprise the ability to respond to “changes in

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<sup>43</sup> Back in 1975, an era when competition analyses were less rigorous and sophisticated, the Department of Justice (“DOJ”) advised the Commission that cross-ownership regulation was warranted only for newspaper/TV combinations, not newspaper/radio joint ownership. *1975 Second Report and Order* at 1056 ¶ 35, 1057–58 ¶ 39. Since that time, DOJ has revised its view and courts have agreed that newspapers and radio stations are not in the same product market. See *2002 Biennial Review Order* at 13749 ¶ 332 (citing *United States v. Jacor Communications Inc.*, 1996 WL 784589 at \*10 (S.D. Ohio 1996); *Community Pub. Inc. v. Donrey Corp.*, 892 F. Supp. 1146, 1155–57 (W.D. Ark. 1995)).

<sup>44</sup> *2011 NPRM* at ¶ 89; *Prometheus I* at 373 F.3d at 398–99.

<sup>45</sup> *2011 NPRM* at ¶ 89.

<sup>46</sup> Such combinations are highly unlikely to harm localism because, as the record here shows, radio plays a relatively small role in newsgathering, especially at the local level. See *supra* Section II and Section III.A.

consumer preferences” by offering its local content across any platform of the user’s choosing should be factored into the Commission’s “appropriate definition of localism today.”<sup>47</sup>

Second, newspaper/radio combinations can shore up the economic health of the enterprise generally and thereby help to stem further erosion in local newsgathering resources. Even if a particular combination’s radio outlets do not employ a 24-hour news/talk or all news format, at a minimum the enterprise can more efficiently conduct back-office operations – and thereby maintain the wherewithal to continue supporting local journalists’ work. Eliminating the newspaper/radio restraint also would respond appropriately to the changed circumstances of the different media. While the Commission once counted upon financially robust newspapers to take a lead in funding radio operations,<sup>48</sup> today the agency’s concern should center on newspapers – specifically, on the unintended impact that the agency’s outdated NBCO rule is having on the long-term viability of local newspaper reporting.<sup>49</sup> The Commission’s *INC Report*

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<sup>47</sup> 2011 NPRM at ¶ 14.

<sup>48</sup> 1975 *Second Report and Order* at 1078 ¶ 109 (many newspaper-owned stations “began operation long before there was hope of profit and were it not for their efforts service would have been much delayed in many areas”). Yet according to the *INC Report*, even after radio news programming became better established, “local news radio, unlike local television news, was not a guaranteed profit center.” *INC Report* at 60.

<sup>49</sup> Newspaper/radio combinations were innovators in the creation of the all-news radio format in the late 1950s and early 1960s, according to the *INC Report*. The general manager of all-news WMAL(AM) and WMAL-FM, which serve the Washington, D.C. metropolitan area, told the FCC staff that “[t]hey were fortunate ... that the *Evening Star* newspaper, the owner of WMAL at the time, allowed them to make this commitment to local news.” *INC Report* at 60. Yet shortly after the FCC adopted the NBCO rule, *Washington Star Communications, Inc.*, Memorandum Opinion and Order, 57 F.C.C.2d 475 (1976), that same combination was broken up – and within five years the financially troubled *Evening Star* closed after nearly 130 years of operation. See Edwin M. Yoder, *Star Wars: Adventures In Attempting to Save A Failing Newspaper*, Virginia Quarterly Review, Autumn 1993, pp. 582-606, available at <http://www.vqronline.org/articles/1993/autumn/yoder-star-wars-adventures/>. Yoder, the *Star’s* former editorial page editor, noted that one of the paper’s last owners “sought a waiver” of the NBCO rule “and should have had it. But the FCC preferred to dither ... and its dithering helped to dig the *Star’s* grave.” *Id.* At least one sitting FCC Commissioner came to agree. See Fox

compiles a wealth of statistics to substantiate that the newspaper industry is undergoing radical and transformative upheaval, and that the upheaval is due to permanent technological change and not simply the current economic downturn.<sup>50</sup> The *INC Report* also plainly identifies the main factor driving that technological change: the rise of the Internet and other online communications services.<sup>51</sup> Online outlets already have siphoned away much of the newspaper advertising income (particularly that generated by classified ads) which traditionally fueled local newsroom operations – and have done so in a way that decouples advertising income from the gathering and dissemination of any news content, local or otherwise.<sup>52</sup>

No one claims that eliminating restraints on newspaper/radio cross-ownership – or even jettisoning the entire NBCO rule – will “save” the newspaper industry. But retaining the restraint indisputably limits the flexibility that newspaper publishers would otherwise have to fund their ongoing operations as the industry struggles to adapt to a new media environment. No one can confidently predict what the ultimate outcome of that struggle will be or how long it will

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*Television Stations Inc.*, 8 FCC Rcd 5341, 5369 (1993) (Separate Statement of Commissioner Duggan) (“On one other occasion, the Commission considered and then rejected a permanent waiver to permit the cross-ownership of a television station and a daily newspaper in the same market: in Washington, D.C. The newspaper was the *Washington Star*. The FCC refused a permanent waiver, and today the *Star* is silent: No victory for media diversity.”).

<sup>50</sup> *INC Report* at 39-43; see also Notice of Ex Parte Presentation in MB Docket Nos. 09-182, 06-121, (Nov. 10, 2011); Reply Comments of the Newspaper Association of America, MB Docket No. 09-182 (filed July 26, 2010), at 4–5 & Attachment A at 9–10, 11 (“NAA Reply Comments”).

<sup>51</sup> *INC Report* at 39-43, 150; see also NAA Reply Comments, 6 & Attachment A at 11, 14–18.

<sup>52</sup> *INC Report* at 39-42, 126-29; see also Comments of the Newspaper Association of America, MB Docket No. 09-182 (filed July 12, 2010), at 12–14.

take to get there. In the meantime, the prospect of newspaper failures is no longer theoretical,<sup>53</sup> and local newsroom downsizing could continue as the remaining enterprises work to find a new and more stable business model. The Commission would best advance its localism goal by removing restraints on newspaper/radio cross-ownership so that local newsgathering enterprises have more options to help fund their future. Lifting the newspaper/radio rule also would signal government recognition that such combinations provide real public interest benefits – which can encourage newspaper owners to devote more radio airtime to the news and information gathered by the common enterprise.

**3. *Allowing common ownership of newspapers and radio stations cannot harm diversity because radio stations generally play only a limited role in local newsgathering***

The Commission should adopt its tentative conclusion that “radio stations are not the primary outlets that contribute to local viewpoint diversity.”<sup>54</sup> It therefore must conclude accordingly that joint ownership of newspaper and radio outlets cannot undermine the agency’s diversity objective, the sole policy basis on which the full NBCO rule has stood.<sup>55</sup>

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<sup>53</sup> *INC Report* at 41 (listing more than 175 newspapers that shut down or stopped printing paper editions between 2007 and 2010).

<sup>54</sup> *2011 NPRM* at ¶ 112.

<sup>55</sup> *Prometheus I* at 373 F.3d at 402; *2006 Quadrennial Review Order* at 2021–23 ¶¶ 18–20. In addition, because the newspaper/radio cross-ownership restraint imposes substantial speech burdens on targeted speakers which serve no purpose, the rule as applied today is constitutionally infirm. Even under the deferential standard of First Amendment review employed in *NCCB*, the government must at the very least show a rational connection between the goal it seeks to achieve and the means it uses to achieve it. *See* 436 U.S. at 796–797. The Commission in 1975 may have had only an “inconclusive” record with respect to the operation of the NBCO rule at its start, *id.* at 796, but the agency now has decades’ worth of evidence showing that the restraint as applied to newspaper/radio combinations does not advance viewpoint diversity due to radio’s limited role in providing the kind of content – local news – that is the focus of the Commission’s concern. Furthermore, the dynamic growth and evolution of the media marketplace in the last three decades, along with the lifting of many other cross-ownership restraints designed to serve similar diversity and anti-gatekeeping objectives (*e.g.*, cable/broadcast cross-ownership,

As discussed above, the record in this proceeding demonstrates that radio is different; it plays only a small role in the production of local news compared to that of newspapers or television stations.<sup>56</sup> The agency has repeatedly acknowledged as much,<sup>57</sup> and it seems to have tacitly endorsed that view again in commissioning new studies for the 2010 quadrennial proceeding. Of the 11 studies launched in this docket,<sup>58</sup> only one – “Station Ownership and Provision and Consumption of Radio News” – specifically addresses newspaper/radio combinations at all.<sup>59</sup> And it does so only for the limited purpose of discerning the impact, if any, that such combinations might have on variety and listenership within the small universe of radio news.<sup>60</sup> None of the Commission’s 2010 studies consider the effect of newspaper/radio combinations, beneficial or otherwise, on the broader, cross-platform marketplace for news and information; on the long-term viability of original newsgathering enterprises in local markets; or

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telco/cable cross-ownership), indicates that a Commission decision in 2012 to retain newspaper/radio restraints could not withstand First and Fifth Amendment review. *See, e.g., US West, Inc. v. U.S.*, 48 F.3d 1092 (9<sup>th</sup> Cir. 1995), *vacated and remanded for mootness sub nom. U.S. v. US West*, 516 U.S. 1155 (1996), *dismissed sub nom. Pacific Telesis Group v. U.S.*, 84 F.2d 1153 (9<sup>th</sup> Cir. 1996) (rendered moot by passage of the 1996 Act, which lifted the telco/cable cross-ownership ban); *Chesapeake and Potomac Telephone Co. of Virginia v. U.S.*, 42 F.3d 181 (4<sup>th</sup> Cir. 1994), *vacated and remanded for mootness sub nom. U.S. v. Chesapeake & Potomac Telephone Co. of Virginia*, 516 U.S. 415 (1996) (same).

<sup>56</sup> *See supra* Section III.A.

<sup>57</sup> *See supra* Section II.

<sup>58</sup> This count reflects the two separate studies that the Commission numbered “8A” and “8B.”

<sup>59</sup> Joel Waldfogel, FCC Media Ownership Study 5, Station Ownership and the Provision and Consumption of Radio News (“Study 5”).

<sup>60</sup> The analysis showed “no statistically significant relationship” one way or the other with respect the small universe of radio-only news as opposed to the larger news media marketplace. *Id.* at 17.

on the variety of news and information platforms available to consumers today (few of whom likely restrict themselves to the radio medium).

The wide array of modern media platforms justified the Commission’s 2007 relaxation of the NBCO ban in at least two respects and remains relevant here. It is not simply the increased number of competing outlets that matter – the Commission *also* recognized that the new media directly shape and limit the older media of broadcasting and print.<sup>61</sup> To be specific, the Commission should acknowledge again in this proceeding that interactive online media and communications services have substantially eliminated the agency’s old diversity concern about traditional media’s “gatekeeping” power over news and information.<sup>62</sup> *Prometheus II* did not disturb the Commission’s finding that “the new and broader array of inputs from online sources available to the American public not only affects mainstream journalists’ decisions on what to report and how to report it, but websites also act as competing outlets – even, at times, as work-around channels of information in cases where the mainstream media has been slow or reluctant to act.”<sup>63</sup> In other words, the Commission’s viewpoint diversity analysis today cannot rest solely on a head count of the professional newsgathering organizations available in a local community. The nature of newsgathering and dissemination is far different than it was 37 years ago, when arguably a few news editors and producers could decide which local issues were important and

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<sup>61</sup> 2006 Quadrennial Review Order at 2031–32 ¶¶ 36–38.

<sup>62</sup> See *id.* at 2032 ¶ 38 (“The erosion of newspapers’ traditional gatekeeping power convinces us that newspaper combinations no longer pose the same threat to diversity that they once did.”) See also generally *id.* at 2031–32 ¶¶ 36–38.

<sup>63</sup> *Id.* at 2031–32 ¶ 37 (internal citations omitted). As the 2011 NPRM reflects, *Prometheus II* “did not address the Commission’s substantive modifications to the [NBCO] rule,” 2011 NPRM at ¶ 88, and therefore did not call the agency’s substantive analysis into question.

what citizens needed to know about them.<sup>64</sup> And since the 2006 *Quadrennial Review Order* was issued, the number of scholarly and professional articles documenting the trend has increased.<sup>65</sup>

In short, if the Commission ever had a theoretical basis for predicting that newspaper/radio combinations might pose a threat to viewpoint diversity, the facts now show that the theory is wrong. Consistent with this understanding, the 2011 *NPRM* notes that commenters who in the past raised concerns about newspaper/radio combinations no longer oppose them. For example, the Minority Media and Telecommunications Council supports elimination of restraints on joint ownership of radio stations and daily newspapers in the same

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<sup>64</sup> The *INC Report* is among many media studies in recent years that have explained how the traditional media's gatekeeping power – based on the reality of “a relatively small number of people to produce content and send it on its way” – was transformed by the emergence of online communications. *INC Report* at 116. “Decentralization and universality – these principles insured that the Internet and the web would revolutionize not only the dissemination of news and information but how it was gathered and packaged and by whom. *Id.*; see also generally *id.* at 116–122.

<sup>65</sup> See, e.g., Robert Niles, On the Internet, No One Has To Be a Gatekeeper, but Everyone Can Be, *OJR: THE ONLINE JOURNALISM REVIEW*, Aug. 3, 2010, <http://www.ojr.org/ojr/people/robert/201008/1873/> (“We've well established by now that the Internet has crippled the news industry's role as gatekeeper of information in society.”); Jane B. Singer et al., PARTICIPATORY JOURNALISM: GUARDING OPEN GATES AT ONLINE NEWSPAPERS 15 (2011) (“The role of the journalist as gatekeeper rested largely on professionals' privileged access to the means of producing and disseminating information. However, that role has been undermined by digital media technologies, which enable users, as individuals or groups, to create and distribute information based on their own observations or opinions. These technological advances, coupled with contemporary problems in journalism as an institution and an industry, present new challenges to the media.”); John Allen Hendricks, THE TWENTY-FIRST CENTURY MEDIA INDUSTRY: ECONOMIC AND MANAGERIAL IMPLICATIONS IN THE AGE OF NEW MEDIA 15 (2010) (“New media technology has now placed the consumer in the powerful and influential position of generating information and content and leaping past the ‘gatekeeping’ role altogether.”); Elaine Yuan, NEWS CONSUMPTION ACROSS MULTIPLE MEDIA PLATFORMS: A REPERTOIRE APPROACH, *INFORMATION, COMMUNICATION & SOCIETY* 998-1016 (2011) (“As media abundance and decentralization pose a significant threat to the gatekeeping role of traditional news institutions, many media scholars question whether the agenda-setting function of the media may still be tenable in the contemporary media environment.”).

market “given the economic hardships facing so many newspapers.”<sup>66</sup> Similarly, comments filed in the inquiry phase of this docket to support continuation of the NBCO rule appear to focus only on newspaper/TV combinations, not newspaper/radio ones.<sup>67</sup>

With the record now before it, the Commission would be well supported in lifting restraints on common ownership of newspapers and radio stations in a local market – and to rely instead, as the *2011 NPRM* proposes, on application of the local radio rules to adequately protect viewpoint diversity in a community.<sup>68</sup>

### **C. Limiting Newspaper/Radio Cross-Ownership Rule Relaxation To The 20 Largest Markets Cannot Be Empirically Justified**

As the Commission’s questions in the *2011 NPRM* suggest, the Commission could not logically justify retention of a newspaper/radio cross-ownership restraint that distinguishes between some number of large markets above a Nielsen television-based market ranking cut-off line and all other markets below it.<sup>69</sup> The Commission’s line-drawing exercise for NBCO relaxation in the *2006 Quadrennial Review Order* – which serves as the basis for the current “top 20 market” cut-off proposal<sup>70</sup> – plainly centered on newspaper/*television* combinations and their potential impact on markets of various sizes. The brief analysis in that prior order establishing

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<sup>66</sup> *2011 NPRM* at n.251 (citing remarks of David Honig, President and Executive Director, MMTC).

<sup>67</sup> *See, e.g.*, Comments of Communications Workers of America, et al., MB Docket No. 09-182, at 13-15, 30-31 and 35-36 (discussing newspaper/television combinations and separating addressing local radio caps); Comments of Office of Communication of United Church of Christ, Inc., et al., MB Docket No. 09-182, at 9 (brief discussion of NBCO rule factors applicable only to analysis of proposed newspaper/TV combinations).

<sup>68</sup> *2011 NPRM* at ¶ 112.

<sup>69</sup> *Id.* at ¶ 112.

<sup>70</sup> *Id.* at ¶ 112.



the top 20 cut-off line focused primarily on television and daily newspapers – the rule’s “major media voices,” which by the Commission’s own definition does not include radio stations.<sup>71</sup>

Radio, once again, appears to have been treated as something of a make-weight after-thought in the agency’s rationale. The Commission’s line-drawing discussion in the *2011 NPRM* is similar: It makes no reference to radio.<sup>72</sup>

Closer scrutiny of the proposed top 20 market cut-off illustrates the arbitrariness of such line drawing with respect to radio. As set forth in the proposed text of the rule, the geographic cut-off for either newspaper/TV or newspaper/radio combinations is based on Nielsen’s television-oriented “Designated Market Areas” (“DMAs”).<sup>73</sup> Yet the number of *radio* facilities or owners in a DMA does not consistently rise or fall in correlation to Nielsen’s population-based rankings of TV market size. For example, a recent analysis shows that the number of radio stations licensed within the two smallest markets above the top 20 cut-off is inversely proportional: the Orlando-Daytona Beach-Melbourne, FL DMA (No. 19) contains 98 radio stations, while the Sacramento-Stockton-Modesto, CA DMA (No. 20) contains 112 radio stations.<sup>74</sup> And the radio count in both local markets is dwarfed by the number of radio stations – 180 – in the Salt Lake City DMA (No. 33). When the count focuses instead on “voices,” *i.e.*, separate owners, it appears that the Orlando and Sacramento markets realign themselves with their DMA ranking, at approximately 54 voices and 45 voices respectively. But both still fall

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<sup>71</sup> *2006 Quadrennial Review Order* at 2041–42 ¶¶ 55-56; *see also id.* at 2042 ¶ 57 (defining “major media voices” as full power commercial and noncommercial television stations and major newspapers).

<sup>72</sup> *2011 NPRM* at ¶ 105.

<sup>73</sup> *2011 NPRM* at Appendix B (text for proposed § 73.3555(d)(2).

<sup>74</sup> Data derived from BIA Advisory Services, LLC using BIA/Kelsey’s Media Access Pro.<sup>TM</sup>

well short of the approximately 76 independent radio voices available in the Salt Lake City DMA.

There is no clear reason, therefore, why the smaller ranked DMA should enjoy no relief under a relaxed newspaper/radio rule. What *is* plain is that drawing a bright-line cut-off based on market size does not work for radio and, therefore, the *2011 NPRM's* set of differing presumptions cannot be justified. Given such discrepancies, the Commission should forego any notion of affording newspaper/radio cross-ownership relief based on distinctions in market size.

**D. If The Commission Retains Any Vestige Of The Newspaper/Radio Cross-Ownership Rule, It Should Avoid Perverse Results That Would Stem From Enlarging The Geographic Scope Of The Restraint**

The *2011 NPRM's* list of questions about the appropriate geographic boundaries for any future newspaper/radio regulation barely hints at the complexity of reshaping this aspect of the rule. There are no truly good options short of eliminating the restraint, but some are worse than others. The least problematic option is to retain the current contour-based approach to the local market definition, which would prevent the rule from expanding to prohibit combinations that currently comply with the cross-ownership limits.

Although the concept of aligning the market boundary definition used in all radio-related ownership rules may have some surface appeal, the Commission is correct in proposing to maintain the current contour-based approach for newspaper/radio cross-ownership.<sup>75</sup> Expanding the geographic reach of the restraint by switching to an Arbitron market-based definition would for the first time prohibit newspaper/radio combinations in many areas where they are now compliant. In other words, such a change would impose a ban even where distinct communities are not, in fact, served by the co-owned outlets. For example, Scranton currently owns an AM

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<sup>75</sup> *2011 NPRM* at ¶ 113.

and FM radio combination, WEZX (FM) and WEJL(AM), in Scranton, PA and a small daily newspaper, the *Standard-Speaker*, in Hazleton, PA, a small town located approximately 46 miles southwest of Scranton.<sup>76</sup> Common ownership of these media outlets triggers no FCC restraints, but switching to Arbitron as the market definition suddenly would alter the situation as a legal matter (absent grandfathering) even though operationally nothing has changed.<sup>77</sup> It plainly would serve no purpose to cast a shadow on the common ownership of WEZX and WEJL (which broadcast classic rock and sports, respectively) and a small daily newspaper serving far-flung communities outside the Scranton stations' acceptable signal coverage area.<sup>78</sup>

The Commission cannot empirically justify maintaining even the existing newspaper/radio restraint, much less support the wholesale geographic expansion of it – particularly when the changed market definition would serve no obvious policy purpose other than, at most, administrative convenience. If the agency opts to keep any vestige of the rule, it should retain the contour-based market definition and thereby avoid needlessly blocking common ownership arrangements that can help traditional media outlets stay in business.

#### **IV. CONCLUSION**

After many years of rulemaking effort and multiple rounds of appellate review, the Commission today is in a position to show that dispassionate analysis of facts is driving its media

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<sup>76</sup> The distance discussed in this paragraph was derived from use of Rand McNally's online mileage calculator, available at <http://www.randmcnally.com/mileage-calculator.do>

<sup>77</sup> The Commission also should adopt its proposal to grandfather any compliant newspaper/radio combinations that could be called into question by a new approach to the relevant local market determination. *2011 NPRM* at ¶ 114. Compulsory divestiture would be extremely disruptive to the ongoing ventures, particularly those that serve small and economically modest communities.

<sup>78</sup> Radio stations must depend on their over-the-air signal to reach listeners. In many places, signal strength and terrain issues limit a radio station's reach to something less than a full Arbitron market.

ownership rulemaking. The record here justifies lifting the entire NBCO rule, notwithstanding arguments made by some parties to preserve the newspaper/television restraint. But no one is engaging in a similar debate about newspaper/radio combinations. Facts concerning joint ownership of newspapers and radio stations in the same market are clear, convincing, and undisputed. They amply support Commission re-adoption of its earlier conclusions that such combinations pose no harm to the agency's competition goal and can actually advance its localism objective. Moreover, because radio plays only a minor role in newsgathering at the local level, joint operation of radio and newspaper outlets cannot adversely affect viewpoint diversity.

In sum, a decision to retain any vestige of the newspaper/radio cross-ownership rule would be sharply at odds with years of Commission observations about the negligible impact of the regulation and the dearth of current empirical evidence to support it. Eliminating the rule is the only rational alternative. Accordingly, the Commission should adopt the *2011 NPRM* proposal to lift the existing newspaper/radio restriction entirely and rely instead on its service-specific local broadcast rules to continue fostering diversity in local media markets.

Respectfully submitted,

**BONNEVILLE INTERNATIONAL CORPORATION  
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